

REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, the claims have been amended for clarity.

The Examiner has indicated that the specification does not support the claim limitation that the additional layer is "in contact with the carrier substrate" and that the specification allows for the additional layer to be on either side of the recording layer.

Applicants assert that while the specification may disclose alternative positions of the additional layer, the claims do not need to claim all of these alternatives. Applicants submit that in the drawings, which form a part of the written description, Fig. 1 shows the additional layer 4 "in contact with" the carrier substrate 5, in that there is no intervening layer. However, in the spirit of moving ahead the prosecution in this application, Applicants have amended to claims to indicate that the additional layer is "directly adjacent" the carrier substrate.

Applicants believe that the above changes answer the Examiner's 35 U.S.C. 112, paragraph 1, rejection of the claims, and respectfully request withdrawal thereof.

The Examiner has rejected claims 1-7, 9-11 and 13-23 under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 6,033,752 to Suzuki et al.

The Suzuki et al. patent discloses an optical recording medium and method for recording optical information.

As noted in MPEP §2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

The Examiner indicates that in Suzuki et al. "The recording layers are formed between two substrates (2, 7)."

Applicants submit that this is not accurate. Rather, as indicated in Suzuki et al. at col. 4, lines 41-44, element 2 is a substrate while element 5 is a protective layer, and element 7 is an upper plate. The substrate 2, as described at col. 4, lines 57-67, has a guide track formed therein, while this is not the case for the protective layer 5 or the upper plate 7.

The Examiner further states "The protective layer/reflective layer combination can be called an "additional layer" where the "additional layer" is in contact with the substrate 7.

Applicants submit that the Examiner is mistaken. As clearly shown in Fig. 3 of Suzuki et al., an adhesive layer 6 lies

between the protective layer/reflective layer 5 and the upper plate 7. In addition, however, upper plate 7 is not the substrate (in which a guide track is formed). This is supported in the subject specification in which paragraph [0056] indicates that WO99/59143 is incorporated by reference, which, in turn, at page 5, lines 8-11 indicates that the substrate is provided with a servotrack. As such, Applicants submit that Suzuki et al. neither discloses nor suggests "at least one additional layer directly adjacent the carrier substrate and positioned between the carrier substrate and the at least first layer".

In addition, in Suzuki et al., the electromagnetic radiation is meant to enter the optical recording medium through the substrate 2 (note that at col. 4, lines 45-48, Suzuki et al. states that the substrate is transparent to the light beam being used). In the subject invention, on the other hand, the electromagnetic radiation enters the optical recording medium opposite from the substrate. This is shown in Fig. 1 where the electromagnetic radiation (laser beam) is schematically shown as lens 2 focusing the beam through the cover layer 3 to the information layers 12 and 11.

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-7, 9-11 and 13-23, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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